

VICTOR HOLZ

IBLA 79-214

Decided August 27, 1979

Appeal from decision of California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease CA 3910.

Affirmed.

1. Oil and Gas Leases: Termination – Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental the day it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Where a lessee presents no evidence that illness of a family member or a heavy work

load were so disruptive as to prevent him from carrying on his other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by the illness or the work.

APPEARANCES: Victor Holz, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE LEWIS

Victor Holz appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated February 1, 1979, denying reinstatement of oil and gas lease CA 3910. The lease terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date of the lease was December 1, 1978. Appellant's payment envelope was postmarked in Oakland, California, on December 1, 1978, and received by BLM in Sacramento, California, on December 5, 1978. BLM notified appellant that the lease had terminated for failure to pay rental in a timely manner.

Appellant petitioned for reinstatement stating that a delay in the mail was responsible for the late payment. He said he assumed that BLM's receipt for the rental payment constituted acceptance of the payment.

On February 1, 1979, BLM issued its decision denying reinstatement of the lease because it found that mailing rental on the due date does not constitute reasonable diligence as required by 43 CFR 3108.2-1(c)(2). It also said: "The receipt is only a receipt for a late payment, nothing more, nothing less."

In his statement of reasons, appellant contends that his failure to make timely payment was due to his wife's sickness and the heavy work load on his job. He explains that he has made timely payment in past years and contends that his failure to do so this year was justifiable and not due to a lack of reasonable diligence because of the above stated reasons.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] BLM properly denied appellant's petition for reinstatement on the ground that payment on the due date did not constitute reasonable diligence. Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). As noted above, appellant's envelope was postmarked December 1, 1978. The rental was due in the proper BLM office the same day. We must conclude that mailing the rental the day it is due does not constitute reasonable diligence. Joseph W. Semien, 41 IBLA 185 (1979); Jones K. Mullinax, 35 IBLA 73 (1978).

[3] Next we shall consider whether appellant may justify his failure to make timely payment. On appeal, he asserts that his wife's illness and his heavy work load contributed to his failure to make timely payment.

In Albert R. Fairfield, 34 IBLA 132 (1978), the Board considered illness of a family member as a justification for late payment. The discussion at 134 reads as follows:

On appeal, appellant asserts for the first time that the illnesses of his wife and son contributed to his failure to make timely payment. <sup>1/</sup> However, appellant admits that these illnesses did not prevent him from going to work as usual. Where illness is not so severe as to prevent a lessee from attending to other business, it does not justify the late payment of rental. Milan de Lany, 22 IBLA 47 (1975). Appellant presents no evidence that these illnesses were so disruptive as to prevent him from carrying on as usual other routine activities of his home life, or that they otherwise caused him to be unable to pay the rental timely. In the absence of evidence establishing a direct casual connection between the illnesses of a lessor's family member and the late payment of rental, the late payment is not justified. William L. McCullough, *supra*. [18 IBLA 97 (1974); footnote omitted.]

Applying the same reasoning to the case in issue, we find that the illness of appellant's wife did not justify his failure to make timely payment.

Appellant has offered no evidence to show how his heavy work load was the proximate cause of preventing him from paying the rental on time. Therefore, a heavy work load will not justify the late payment.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur.

Frederick Fishman  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

